Bail Slip

That the Appellant/Petitioner namely Kancharla Veeraiah was directed to be released on bail in and by the order of this court dated 11.10.2000 and made in CRL.MP.No.7108 of 2000 in CRL.Appeal No.880 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 880 of 2000

Kancharla Veeraiah ..Appellant

-vs-

State rep.by
Inspector of Police
Vigilance and Anti Corruption
Police Unit,
Pondicherry. .. Respondent
(Crime No.1/1997)

This appeal is filed under section 374 Crl.PC against the Judgment made in Spl C.C.No.1 of 1997 dated 04.9.2000 on the file of Court of the Special Judge, Pondicherry.

For appellant : : Mr.P.N.Prakash
For respondent : : Mr.M.R.Thangavel
Public Prosecutor(Pondicherry)

JUDGMENT

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This appeal has been preferred against the Judgement in S.C.C.No.1 of 1997 on the file of the Subordinate Judge(under Prevention of Corruption Act),Pondicherry.

2.The facts of the prosecution case are that on 7.6.1997 at about 08.40 hours at B.2, Government Quarters,Lawspet, Pondicherry, the accused trespassed into the house of Deva Neethi Das,P.W.1, a Director, Local Administration Department, Pondicherry and committed an offence of abatement defined under Section 7 or 11 r/w 12 of

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Prevention of Corruption Act 1988 and committed an offence under Section 451 IPC and in the course of the same transaction, the accused had tried to P.W.1, Deva Neethi Das who is a public servant by offering a bribe of Rs.7,000/- in cash among some other sundry articles and thereby committed an offence punishable under Section 12 of Prevention of Corruption Act.

3.The case was taken on file by the learned Special Judge as C.C.No.1 of 1997 and on appearance of the accused on summons, copies under Section 207Cr.P.C. were furnished to the accused and when the charges under Section 451 of IPC and under Section 12 of the Prevention of Corruption Act 1988 were explained to the accused, the accused pleaded not guilty.

4. On the side of the prosecution, P.Ws 1 to 11 were examined. Exs. P1 to P7 were exhibited and M.O.1 to M.O.76 were marked.

5. P.W.1 is the complainant who would depose that on 7.6.1997 while he was returning from the town at about 8.30a.m., he saw the accused waiting in the verandah of his house at B2 Government Quarters,Lawspet, who introduced himself as Veeraiah and that he is representative of the Twin Theatres at Yanam viz., Sri Padma Picture Palace and Veereswara. Since P.W.1 refused to entertain a private person in the official matters in his house, he requested him to leave the place. But the accused insisted that he has come from Yanam and had to return the same day and pleaded for an audience. So P.W.1 allowed him to enter the front room of his house and gave an audience to him. The accused narrated that his twin theatres got damaged during the cyclone that occurred in Yanam during 1996 and applied for exemption of entertainment tax so as to compensate the loss incurred by him and that he tried to meet P.W.1 even on 6.6.1997 but he could not do so. The accused has further informed that from the office of the Deputy Director, he was informed that for grant of entertainment tax exemption, the proposal has been processed and sent to the Government and that thereafter he met the under Secretary to the Government Thiru Kuppusamy and requested him to process the exemption in his favour and he has further informed that the entertainment tax was collected in Andhra Pradesh is much less than that is being collected in Pondicherry. The said Veeraiah then produced a plastic carry bag with some materials inside and told that he had brought some mangoes jelly and pickles from Yanam and requested him to accept the same. P.W.1 irked by the said act of the accused, shouted at him to leave the house without disturbing him. Immediately, the accused left the house and after five minutes, his (P.W.1) wife went to close the door, saw the plastic carry bag left in the chair with some materials inside and when she opened the plastic carry bag a white coloured plastic container, a newspaper wrapped small bundle and another small carry bag with a pink colour cover inside were found. M.O.1 is the plastic container

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containing mango pickles. M.O.2 is the plastic carry bag .M.O.3 is the mango jelly wrapped in an English newspaper. The small plastic cover which was covered by a pink envelope containing currency notes without counting the same,he searched for the accused Veeraiah in and around his house in the Air Port Road but he could not find him. Thereafter, he returned to home and phoned up Thiru Hemachandran, Secretary to the Government,LAD at his residence. But he could not contact him immediately, since he was informed that the Secretary was otherwise engaged. Then he phoned up the Superintendent of Police,Vigilance at his residence . But there was no response. Again he phoned up Thiru Sivaji Sinha, Superintendent of Police(north) who responded. P.W.1 narrated the incident to the Superintendent of Police (north) and requested him to search for Veeraiah . At 9.05 a.m. Secretary to Government contacted him over phone. P.W.1 narrated him what had transpired in his house. As per the instruction of the Secretary to the Government , he brought all the materials to his office at 10.30a.m and prepared a complaint and filed the same before the Chief Vigilance Officer, viz., the Chief Secretary. The Secretary came at 11.40 a.m. took the materials and verified the contents. In the plastic container pickles were found. In the newspaper bundle seven mango jellys were found. In a small carry bag a pink colour cover was found inside of which there were currency notes . He had submitted a typed written complaint to the Secretary. The currency notes found in the white carry bag were of denomination of 69 hundred notes and two fifty rupees notes amounting to Rs.7,000/-. At about 12.45p.m., Thiru Shivaji Sinha, Superintendent of Police,(north) Thiru K.S.Ramalingam, Inspector of Police, Grand Bazaar came to the office of Secretary to Government, they brought Veeriah along with them. P.W.1 has identified Veeraiah . As per the instruction of the Secretary to the Government, he went to the office of the Superintendent of Police, Vigilance to file the complaint and to hand over the materials. Ex P1 is the complaint dated 7.6.1997 preferred by him. He has also narrated the incident which took place on 6.6.1997 at about 6.45.p.m., in his residence. He has received a phone call from his residence informing that one Veeraiah from Yanam had come to house to see him and that he has informed not to entertain him and to direct him to meet P.W.1 in his office. Even though he was in the office till 7.45 p.m., the said Veeraiah did not turn up . M.O.4 is the pink colour cover containing 69 currency notes with denomination of Rs 100/- and two currency notes with denomination of Rs.50/-. He has also exhibited the currency notes which are M.O.5 to M.O.76.

5a) P.W.2 is the wife of P.W.1. According to P.W.2, on 6.6.1997 at about 6.45p.m., her servant maid Valli informed her that one veeraiah from Yanam was waiting in an auto near the main gate to see P.W.1 and that she instructed the servant maid to inform the said Veeraiah that P.W.1 will not entertain anybody in his house in connection with the office matters and after informing this to the

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accused, Valli, the servant maid, returned and told P.W.2 that since P.W.1 was not available in his office, the accused had come to meet him in his house. Immediately, she contacted P.W.1 over phone in his office and informed about the accused who is waiting outside his house. But P.W.2 asked her to inform the accused to meet P.W.1 only at his office and accordingly she had conveyed the message to the accused through her servant maid Valli. The said Veeraiah left the house on that day ie., on 6.6.1997. P.W.1 returned to the house at about 7.40p.m. On the next day ie.,on 7.6.1997 at about 7.45 a.m.,P.W.1 went in a moped to the town for blood test and he returned at about 8.30 a.m., and at that time, the person who came to the house on 6.6.1997, was found ringing the calling bell in the house. When the servant maid opened the gate , she had informed P.W2 that the person who came on 6.6.1997 is waiting at the doorstep and informing that he is Veeraiah from Yanam and wanted to meet P.W.1. So, P.W.2 has provided a chair on the veranda of her house and asked him to wait there. P.W.1 returned to the house at about 8.30 a.m., and he talked to the accused for about five minutes and came inside the house. She gave coffee to her husband(P.W.1) and went to the front gate and locked the same and at that time, she noticed that one carry bag was placed on the chair near the door which was left by the person who was sitting in the veranda. On opening the carry bag, P.W.2 has found M.O1 to M.O.76 inside the said bag and also showed the same to her husband and thereafter her husband P.W.1 went in search of the person in a moped and he returned after five minutes informing that the person could not be traced out. P.W.1 then contacted the higher officials over phone and at about 10.15 hours P.W.1 went to meet the Secretary,Local Administration Department along with M.O.1 to M.O.76 in a trucker belonging to the Local Administration Department. Three police officials came to her house on that evening and enquired her.

5b) P.W.3 is the typist under P.W.1 who would depose that on 7.6.1997 at about 10.30a.m., when he was in the office of Director of Local Administrative Department, P.W.1 came to the office and he had taken dictation given by P.W.1 in shorthand and the complaint was preferred by P.W.1 to the Chief Vigilance Officer at about 11.45a.m., the Secretary to the Local Administration Department came to the office to whom P.W.1 had handed over M.Os 1 to 76. The total amount of M.Os5 to 76 comes to Rs.7,000/-. M.O.4 is the cover containing 69 number of currency notes of Rs.100/-denomination and two numbers of currency notes of Rs.50-/ denomination. M.Os 1 to 76 were handed over by P.W.1 to the Secretary, Local Administration Department. Since the Chief Vigilance Officer is out of station and P.W.1 was instructed to lodge the complaint before the Superintendent of Police, Vigilance Cell. At about 10.00p.m.,a person was brought to the chambers of the Secretary ,Local Administration Department by S.P and Inspector. The said person was identified by P.W.1 who is the accused in this case. At about

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1.30p.m., all went with P.W.1 to the office of the Vigilance and Anti Corruption Unit to lodge a complaint. P.W.1 handed over M.O.1 to M.O.76 along with his complaint to the Superintendent of Police Vigilance and Anti Corruption. Ex P2 is the form 95 in which he has signed.

5c)P.W.4, Shanmugavalli is the servant maid in the house of P.W.1. According to her, on 6.6.1997 at about 6.45p.m., the accused came in an autorickshaw and pressed the calling bell in the gate and also informed her that he is coming from Yanam and wanted to see P.W.1 and accordingly she passed on the massage to P.W.2 who in turn had contacted P.W.1 over telephone and after that she had asked her (P.W.4) to inform the accused to go and meet P.W.1 to his office. When the message was conveyed to the accused, he left the place and on 7.6.1997 at about 8.00a.m., the accused came to the house of P.W.1 and sounded the calling bell. The accused informed P.W.2 that he wanted to see P.W.1 compulsorily, P.W.2 offered a chair to him in the veranda and the accused occupied the chair and then she went inside the house to do her household duties.

5d) P.W.5 is the P.A. to the Director, Local Administration Department. On 6.6.1997 a person came to the office and introduced himself as Veeraiah. P.W.5 has also identified the accused as he is the person who came to the office on 6.6.1997 and informed that he is coming from Yanam and he required some appointment with Director, Local Administration Department, regarding Sri Padma Pictures tax exemption. Accordingly, he has also informed the Director but since he was very much preoccupied with the other official work, he directed the said person Veeraiah to contact the Deputy Director, Thiru Mathivanan and to represent his grievance. Again the said Veeraiah came to his office by 11.00a.m., and insisted that he wanted to meet Director,Local Administration Department who in turn had informed that he cannot meet the said Veeraiah due to his pre occupation. The accused again came on the same day at 3.45p.m., and wanted to meet the Director. But the Director refused to meet the accused. Since the accused persisted, he(P.W.5) disclosed the residential address of the Director to the accused . Then the accused left the office. At about 6.45p.m., the Director received the phone call from his wife and informed him that the accused has come to their house to meet him and then the Director asked him(P.W.5) as to who had furnished the residential address to the accused. P.W.5 has replied that the address of P.W.1 was furnished to the accused only by him,since the accused had insisted to meet the Director in person immediately and wanted to return Yanam on the next day. The Director informed his wife over phone that the accused may be directed to come to his office. The Director was in the office till 7.30p.m, but the accused did not turn up.

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5e) P.W.6 is the Secretary, Pondicherry Housing Board. He was working from June 1995-1998. He would depose that during the cyclone period in the year 1996, Proprietor of Sri Padma Picture Palace, Yanam and Veeraswara Chitra Mandir the twin theatre at Yanam had given representation to the Chief Minister requesting the exemption of entertainment tax since he has suffered loss during cyclone period . In the said representation , he has sent a proposal as that of a lesser tax as in Andhra Pradesh to the Government. The said proposal was forwarded by the Regional Executive Officer to the Director ,L.A.D, and finally, the said file was sent to the under Secretary of LAD. On 6.6.1997 at about 10.30hours Veeraiah came to the office and enquired about the progress of the representation given by him for exemption of entertainment tax to his twin theatre. P.W.6 has informed him that the matter has been processed and the files sent to the Government on 14.5.1997 itself and for further details he asked him to contact the under Secretary LAD and the accused left the office. Ex P3 is the attested copies of the representation dated 16.11.1996 by the accused. Ex P4 is the attested forwarding letter dated 25.11.1996.

5f) P.W.7 is the Receptionist in Government Guest House,Uppalam, Pondicherry. During 1997 he was working as an Assistant in the office of Additional District Magistrate, Pondicherry and he dealt with the issuance of licence for the theatre in the Union Territory of Pondicherry. The cinema theatre at Yanam by name Sri Padma Picture Palace was in the name of Kanchala Kameswaran. After his death, the licence of the cinema theatre has changed in favour of K.Viswanathan,s/o Veeraiah of Yanam who is the brother of Kanchala Kameswara Rao. Ex P5 is the copy of the letter dated 30.5.1996 and Ex P6 is the copy of the licence.

5g) P.W.8 is the Secretary ,Local Administration Department, Pondicherry. According to P.W.8, on 7.6.1997 at about 8.30a.m., P.W.1 contacted him (P.W.8) over phone at his residence and wanted to convey some important message, since he was busy had asked him to contact after some time. At about 9.00a.m., on the same day, again P.W.1 contacted him(P.W.8) over phone and informed that on the same day morning around 8.30 a.m., while he returned to his house from town, he saw a person by name Veeraiah waiting there and informed him(P.W.1).that he wanted to discuss some official matter with him(P.W.1) He (P.W.8) asked P.W.1 to come to his (P.W.8) office at 10.30a.m.,when he reached the office at 11.40a.m., P.W.1 was present in his office. He dictated the complaint before him addressing the same to the Chief Vigilance Officer. P.W.1 has informed him that the accused has left a small plastic bag with some articles in his house which was brought by him. P.W.8 went through the bag which was produced by P.W.1. The bag contained a plastic jar of some pickles, some mango jelly wrapped up and a bundle of currency notes wrapped up (M.O 1 to M.O.76). He has counted the

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currency notes, there was 69 hundred rupees and two fifty rupees notes,the total value of the same is Rs.7,000/-. M.O.4 is the Cover containing the currency notes and that he has also initialed the same and the physical verification of the currency notes M.Os 5 to 76 was done by him. The complaint of P.W.1 was typed by his stenographer and after signing the same, P.W.1 handed over the complaint to him(P.W.8). He has also made an endorsement on the complaint, as "C.S.(on tour) forwarded to S.P.of Vigilance for necessary action with the material at page 2" and Rs.7,000/- counted by him" and that Ex P1 is the complaint and asked P.W.1 to go to the office of the S.P.Vigilance and handed over the complaint along with the contents of the carry bag and he has also directed his stenographer to accompany P.W.1 S.S.P. brought a person to his room,P.W.1 identified him as the person who came to his house in the same day morning and who left the small bag in his house.

5h) P.W.9 was working as Head Constable Crime Branch Bazaar Police Station , at the time of occurrence ie.,on7.6.1997 at about 11.00 a.m.,the Circle Inspector by name K.S.Ramalingam has directed him to enquire about the person by name Veeraiah, Yanam theatre owner is staying in any lodge in Pondicherry and if he so staying, to bring him and produced him before him(Inspctor Ramalingam) and accordingly P.W.9 searched some lodges in Pondicherry at around 12.30p.m., on the same day, he enquired Victoria lodge which was situated in Nehru Street, Pondicherry and looked into the register maintained in the said lodge, he came to that one Veeraiah was staying in Room Nio.81 and immediately, he went to room No.81 and enquired the person who was staying in that room , he was informed that his name was Veeraiah and he is coming from Yanam and at about 12.45p.m., he produced the accused before the Inspector who had arrested Veeraiah and has also given a report about the arrest of Veeraiah to the Inspector.

5i)P.W.10 is the Inspector of Police who was working as Circle Inspector of Police, Grand Bazaar Circle at the relevant point of time. On 7.6.1997 at about 9.15 a.m., Thiru Shivaji Sinha , the then Superintendent of Police(north) Pondicherry informed him over phone to search and produce one Veeraiah aged 35 years of Sri Padma Picture Palance ,Yanam in Pondicherry Town. In turn, he has directd his crime Head Constable (P.W.9) to search for the said Veeraiah in some of the lodges in the Pondicherry Town and at about 12.45p.m. the Head Constable Sasikumar(P.W.9) informed that he located at room No.81 at Victoria Lodge, J.N.Street,Pondicherry and later produced him. P.W.10 has informed about this to the Superintendent of Police and on his direction, he produed the accused before the Secretary ,LAD(P.W.8) at about 13.00hours along with Superintendent of Police(North) and at that time P.W.1 was also sitting along with P.W.8. P.W.1 has identified the accused as the person who was present in his house at Door NO.B-2,.Government Quarters,Lawspet,

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Pondicherry on the same day at about 8,.30a.m., in connection with the matters relating to the reduction of entertainment tax of his theatre at Yanam and while leaving the house of the Director(P.W.1) Veeraiah had left behind a carry bag contaianing a plastic jar , a paper packet and some currency notes and that M.O.1 to M.O.76 are the articles left behind by the accused and that P.W.1 made a complaint against the accused addressed to Chief Vigilance Officer, Pondicherry. Since the case fell under the Prevention of Corruption Act,P.W.8 Secretary endorsed the complaint to Superintendent of Police(V & AC) and directed to hand over Veeraiah to the Vigilance and Anti Corruption Police Unit, Pondicherry and P.Ws1 and 3 ,P.A to the Secretary (LAD) were asked to go to Vigilance and Anti Corruption Police Unit and lodge a complaint and accordingly a complaint was preferred at about 13.30hours, the accused was taken to Vigilance Anti Corruption Police Unit .

5j) P.W.11,is the Superintendent of Police, Vigilance and Anti Corruption, Pondicherry. He would depose that on 7.6.1997 at about 13.30 hours while he was in his office, P.W.1 came to his officie along with P.W.3 and the accused and produced a typed complaint and a carry bag containing a plastic jar of mango pickles , a paper packet containing mango jellies and a paper cover containing Rs 7000/-(M.Os 1 to 76). On the basis of the complaint, he registered a case in Crime No.1 of 1997 under Section 12 of Prevention of Corruption Act 1988 and 451 of IPC. At 15.30hours, the mango pickles, mango jelly and paper cover containing currency notes(M.O.1 to M.O.76) were seized under Form 95 (ExP2) and attested by P.Ws 1 and 3. He has examined P.Ws 1 and 3 on the same day and recorded their statements. At about 18.00hours , he proceeded to Lawspet to the residence of complainant and examined P.Ws 2 and 4 are recorded their statements. He has also drawn a rough sketch Ex P7 at the occurrence place and had arrested the accused at 21.20hours on the same day and he was sent to judicial remand on 8.6.1997. On 9.6.1997 he has examined P.W.5 and examined P.W.10,P.W.9,and P.W.6 and recorded their statements. On 13.6.1997, he examined P.W.7 and he has collected the ration card of the accused Veeraiah . On 11.6.1997 he has examined P.W.8 and recorded his statement and after completing the investigation, he has filed the charge sheet against the accused under Section 451 IPC and under Section 7 or 11 of Prevention of Corruption Act 1988 punishable under Section 12 of the Prevention of Corruption Act.

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6.When incriminating circumstances were put to the accused, he denied his complicity with the crime. The accused has neither examined any witness nor exhibited any document on his side.

7.After going through the oral and documentary evidence available before the trial court, the trial Judge has convicted the accused under Section 451 of IPC to undergo three months rigorous

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imprisonment and also convicted and sentenced under Section 12 of the Prevention of Corruption Act to undergo six months rigorous imprisonment and a fine of Rs.1000/- with default sentence. The learned Judge has further directed that the sentence to run concurrently. Aggrieved by the findings of the learned Special Judge, Pondicherry, the accused has preferred this appeal.

8. Now the point for consideration in this appeal is whether the conviction and sentence of the learned trial Judge in C.C.No.1 of 1997 under Section 451 of IPC and under Section 12 of the Prevention of Corruption Act 1988 against the accused is sustainable for the reasons stated in the memorandum of appeal ?

9. Heard Mr.P.N.Prakash, the learned counsel appearing for the appellant and Mr.M.R.Thangavel , the learned Public Prosecutor, (Pondicherry) for the respondent and carefully considered their rival submissions.

10. The point:
According to P.W.1, the accused approached him in his house on 6.6.1997 to favour him in the entertainment tax to be collected from him in respect of twin theatre, Yanam which was according to him affected in the cyclone of the year 1996.Ex P1 is the complaint preferred by P.W.1 against the accused stating that on 7.6.1997, the accused had trespassed into his house in order to offer a bribe of Rs.7,000/- to do some favour in the levy of entertainment tax to be collected for the twin theatre of the accused which are situated at Yanam. Two charges levelled against the accused. One is under Section 451 of IPC and another one is under Section 12 of the Prevention of Corruption Act 1988.
Section 451 of IPC reads as follows"

> "Who ever commits house-trespass in order to the committing of any offence punishable with imprisonment , shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years."

Section 442 of IPC define a house trespass as follows:

> "Who ever commits criminal trespass by entering into or remaining in any building, test or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit"House-trespass"
> Explanation:-The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass."

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So to warrant conviction under Section 451 of IPC, the prosecution must prove that the accused had committed an offence of house trespass as defined under Section 442 of IPC. So as per Section 442 IPC, the definition of House trespass a person who has entered into a building or remained there, that means, he would have trespassed into the building without the knowledge or the permission of the owner of the said building.

11. The evidence of P.Ws 1, 2 and 4 are relevant for the purpose of deciding whether the offence under Section 451 of IPC has been attracted against the accused . P.W.1 in his evidence in the chief examination would say that while on 7.6.1997 he was returning at about 8.30 a.m., from the town, he saw the accused waiting in the veranda of his house at door No.B2,Government Quarters, Lawspet, Pondicherry and introduced himself as one Veeraiah and he is the representative of twin theatre viz., Sri Padma Picture Palace and Veereswara, at Yanam. He requested him to go out of his house but the accused had insisted that since he has come from Yanam and has to return on the same day , he may be given an audience and the admitted evidence of P.W.1 is that thereafter he allowed the accused to enter the front room of his house.P.W.2 the wife of P.W.1 would also corroborate the evidence of P.W.1 to the effect that on 7.6.1997 at about 7.45 a.m., P.W.1 had gone to the town for blood test and at about 8.00 a.m., the accused pressed the calling bell and her servant maid opened the door and informed that the person who came on the previous day ie., on 6.6.1997 has come and informed that he has come from Yanam and wanted to meet P.W.1 and that she provided a chair in the veranda of her housue and asked the accused to sit there and that her husband P.W1 returned to the house at about 8.30 a.m., and he talked to the accused who was sitting in the veranda for about five minutes and went inside the house. The evidence of P.W.4 goes one step further in the cross examination that P.W.2 has offered coffee to the accused and P.W.1 invited the accused to the hall which is situate next to the veranda as seen from Ex P7 rough sketch and P.W.1 was talking to the accused for nearly ten minutes. So from the above evidence of P.Ws 1,2 and 4, it is clear that the accused was invited by P.Ws 1 and 2 to the house and was also offered seat and coffee and he was also permitted to enter into the drawing room. Under such circumstances, the possible inference can be gathered from the evidence against the accused is that he was only permitted to enter into the house and not has committed any criminal trespass to warrant conviction under Section 451 of IPC.

12. The next charge levelled against the accused is under Section 12 of the Prevention of Corruption Act which reads as follows:

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> "Whoever abates any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

So to warrant conviction under Section 12 of Prevention of Corruption Act , it is the bounden duty of the prosecution to prove that the offence under Section 7 or 11 of the Prevention of Corruption Act has been abetted by the accused.

Section 7 of the Prevention of Corruption Act runs as follows:

"Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive, or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with anylocal authority, corporation or Government company referred to in Clause (c) of section 2 , or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations:

> (a) "Expecting to be a public servant" . If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.
>
> (b) "Gratification" the word "gratification" is not restricted to pecuniary gratifications or to gratifications estimatable in money.
>
> (c) "Legal remuneration" the words "Legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.
>
> (d) "A motive or reward for doing"a person who receives a gratification as a motive or r eward for doing what he does not intend or is not in

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a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public s ervant has committed an offence under this section."

Section 11 of the Prevention of Corruption Act says that whoever is being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having
any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. So the prosecution must prove that the accused had abated the offence as indicated above under Sections 7 or 11 of the Prevention of Corruption Act 1988.

13. But from the evidence of P.W.1 it can be gathered that on 6.6.1997 the accused had tried to meet him in his house but he refused to give any audience and he was asked, according to P.W.1 to go to his house and to meet him on the next day ie.,on 7.6.1997 the accused had gone to the office of P.W.1 as seen from the evidence of P.W.3 who has furnished the address of P.W.1 to the accused. But it is seen from the evidence of P.W.3 that even in the office, the accused could not meet P.W.1. So on the next day ie., on 7.6.1997 at about 8.30 a.m., according to P.W.1, the accused was seen in the veranda of his house and that P.W1 alone has allowed the accused to enter into the front room of his house and that he had shown some carry bag containing mango pickles M.O.1 and another carry bag containing mango jelly M.O.3 and the accused had told P.W.1 as a mark of respect he offered M.O1 and M.O.3 to P.W.1 which were strongly refused by P.W.1 and the accused was asked to go out of his house and that accused had left the house and as per the evidence of P.W.1 when he went inside his house, his wife closed the door of the front room saw the plastic carry bag under the chair in which the accused was sitting and on opening the carry bag, he found M.O.1 and M.O.3 along with M.O.5 to M.O.76 currency notes amounting to Rs.7,000/- in 69 hundred rupees denomination and two fifty rupees denomination.

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14. According to P.W.2, the accused was never entertained to the drawing room. A perusal of Ex P7 rough sketch will go to show that two chairs and one sofa are provided only in the drawing room and not in the veranda. But according to P.W.2 she has asked the accused to sit in the veranda in a chair provided by her. But there is no chair shown in the veranda in Ex P7 rough sketch. It is further pertinent to note from ExP7 is that no chair is provided near the door step of the drawing room and only a sofa is seen near the door of the drawing room. The evidence of P.W2 is that the accused was not entertained to the drawing room but was allowed to sit on the chair provided by her at veranda. On the other hand , P.W.1 says that he has allowed the accused to enter into the drawing room. The natural conduct of a person who claims to be a honest is that at any circumstance, he will never allow a stranger to enter into his drawing room that too after knowing that he has come to the house to ask some benefit or favour in his favour in the entertainment tax proposal pending with the Government in respect of his twin theatre situate at Yanam. Another improbability in the evidence of P.W.2 is that she had seen the carry bag left by the accused only after the accused left the house. But according to her evidence, she went to close the door immediately after, the accused left the house and she had seen the carry bag below the chair in which the accused was sitting . The natural conduct expected from P.W.2 is that she would have tried to see the accused out side her house and to ask him to take away the bag. But to our dismay, she had opened the bag and also informed about the articles present inside the carry bag to P.W.1 who then in his moped went around in search of the accused. It is not explained by the prosecution why P.W.1 after seeing the carry bag immediately contacted the local police available to prefer a complaint with them. The evidence of P.W.4 in the cross examination glares at the evidence of P.Ws 1 and 2 because according to P.W.4, the servant maid, the accused was allowed to enter into the drawing room and was also offered a coffee by P.W.2. It is no way in the evidence that the amount of Rs.7,000/- was shown to P.W.1 or offered to P.W.1 at any point of time by the accused. Under such circumstances, it cannot be said that the offence under Section 12 of the Prevention of Corruption Act 1988 ie., the abatement of an offence under Section 7 or 11 of Prevention of Corruption Act has been made out against the accused. The doubt shall inure to the benefit of the accused.

15. Under such circumstances, I hold that the charges levelled against the accused under Section 451 of IPC and under Section 12 of the Prevention of Corruption Act have not been proved beyond any reasonable doubt against the accused to warrant conviction under the above provisions of law. Point is answered accordingly.

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16. In the result, this appeal is allowed and the conviction and sentence imposed on the appellant is set aside and the appellant is acquitted of all the charges. Fine amount, if paid, shall be refunded to the accused. Bail bond executed by the appellant shall stand cancelled. M.Os 5 to 76 are to be confiscated to the Government after the appeal time is over.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Special Judge, Pondicherry

2. The Inspector of Police,
Vigilance and Anti Corruption Police Unit,
Pondicherry.

3. The Public Prosecutor,Pondicherry.

4. The Record Keeper,
VR Section, High Court, Madras.

+ 1 cc to the Government Pleader, Pondicherry SR No.19411

+ 1 cc to Mr. R. Sankaranarayan, Advocate SR No. 19602

VC(CO)
SR/9.4.2007 Crl.A.No.880/2000

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